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UNITED STATES DISTRICT COURT
FOR DISTRICT OF OREGON
PORTLAND DIVISION

DISABILITY RIGHTS OREGON,
METROPOLITAN PUBLIC DEFENDER
SERVICES, INC., and A.J. MADISON,

Plaintiffs,

v.

DAVID BADEN, in his official capacity as head
of the Oregon Health Authority, and DOLORES
MATTEUCCI, in her official capacity as
Superintendent of the Oregon State Hospital

Defendants,

and

LEGACY EMANUEL HOSPITAL & HEALTH
CENTER d/b/a UNITY CENTER FOR
BEHAVIORAL HEALTH LEGACY HEALTH
SYSTEM, PEACEHEALTH, and PROVIDENCE
HEALTH & SERVICES,

Intervenors.

Case No. 3:02-cv-00339-MO (Lead Case)
Case No. 3:21-cv-01637-MO (Member Case)
Case No. 6:22-cv-01460-MO (Member Case)

MARION COUNTY'S PROPOSED
AMENDMENTS TO
ORDER TO IMPLEMENT NEUTRAL
EXPERT'S RECOMMENDATIONS

JAROD BOWMAN and
JOSHAWN DOUGLAS- SIMPSON,

Plaintiffs,

v.

DOLORES MATTEUCCI, Superintendent of the
Oregon State Hospital, in her individual and
official capacity, DAVID BADEN, Director of the
Oregon Health Authority, in his official capacity,
and PATRICK ALLEN in his individual capacity,

Defendants,

and

LEGACY EMANUEL HOSPITAL & HEALTH
CENTER d/b/a UNITY CENTER FOR
BEHAVIORAL HEALTH LEGACY HEALTH
SYSTEM, PEACEHEALTH, and PROVIDENCE
HEALTH & SERVICES,

Intervenors.

LEGACY EMANUEL HOSPITAL & HEALTH
CENTER d/b/a UNITY CENTER FOR
BEHAVIORAL HEALTH; LEGACY HEALTH
SYSTEM; PEACEHEALTH; and PROVIDENCE
HEALTH & SERVICES OREGON,

Plaintiffs,

v.

DAVID BADEN, in his official capacity as Director
of Oregon Health Authority,

Defendant.

3:21-CV-01637-MO (Member Case)

6:22-cv-01460-MO (Member Case)

THIS MATTER comes before the Court on Plaintiffs' Unopposed Motion to Implement Neutral Expert's Recommendations. Having reviewed the papers filed in support of this motion, the Court finds that Defendants are not in compliance with this Court's permanent injunction in *Mink* and ORDERS the following which are necessary to move Defendants towards compliance with that injunction:

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- (1) The Oregon State Hospital, the Oregon Health Authority, Disability Rights Oregon, and Metropolitan Public Defenders shall implement the recommendations in the Court's Neutral Expert's January and June 2022 reports. If necessary to comply with paragraph three (3) of this order, Dr. Pinals may grant extensions of other deadlines in her recommendations after conferring with the parties. Any such extensions shall be documented in Defendants' monthly progress reports.
- (2) The Oregon State Hospital shall not admit patients except as provided for by the recommendations in the Neutral Expert's January and June 2022 reports or as otherwise provided by this Court. Namely, Aid and Assist ("A&A") and Guilty Except Insane ("GEI") persons shall be admitted according to their place on the admissions wait list or pursuant to the relevant expedited admissions policy.¹ In addition, the Oregon State Hospital:
 - a. may admit PSRB GEI revocations and persons pursuant to ORS 426.701 (extremely dangerous persons);
 - b. shall not admit persons civilly committed unless they meet the criteria in the civil admission expedited admissions policy;²
 - c. shall not admit transfers from the Oregon Youth Authority except as provided by ORS 179.473(1)(c), OAR 309-120-0080 and OAR 416-425-0020; and
 - d. shall not admit transfers from the Oregon Department of Corrections unless they meet expedited admissions standards as articulated in the expedited admissions policy.³
- (3) The Oregon State Hospital shall immediately implement the maximum time for inpatient restoration in the Neutral Expert's June 2022 report as follows:
 - a. For patients whose most serious charge is a misdemeanor, the maximum

duration of commitment for restoration shall be the lesser of the maximum permissible sentence for the underlying offense or 90 days;

- b. For patients whose most serious charge is a felony, the maximum duration of commitment for restoration shall be six (6) months, unless the felony is listed in ORS 137.700(2) in which case the maximum duration of commitment for restoration shall be one year.
- c. For purposes of this Order, restoration across multiple charges shall be consolidated and contiguous consecutive periods of restoration should be eliminated unless there are new charges incurred after an initial period of restoration has ended.
- d. Before a patient reaches this maximum duration of commitment for restoration under this Order and remains unfit to proceed, OSH shall notify the committing court of the patient's impending discharge **60** days before the date on which the hospital is required to discharge the patient pursuant to this Order.
- e. *Before any discharge under this Order, OSH will ensure that the committing court and parties to the criminal case are informed as to the current treatment status of the patient, either through a continuing care discharge plan or an updated clinical note as appropriate. At the point of release, OSH will provide the committing court with an updated clinical summary. Once OSH has provided the required information to the committing court and parties, the sheriff of the committing county shall comply with the relevant state court transport order.*
- f. *As soon as possible and no later than 30 days following a patient's commitment, OSH will work together with the committing county and respective Community Mental Health Program (CMHP) to begin discharge planning for the patient.*

- g. If a CMHP or OSH determines that a patient who the CMHP has referred out for placement in the community cannot currently be placed but is reasonably expected to be placed within 30 days, the committing court may order an extension of the discharge deadline of up to 30 days to allow for additional care coordination and discharge planning. Prior to issuing such an order, the committing court must provide the parties to the criminal case an opportunity to object. OSH must receive a copy of the extension order no fewer than 5 business days prior to the expiration of the restoration time period.*
 - h. In the event that a state court order conflicts with the provisions of this Order, any aggrieved individual or entity must first seek relief from the state court order under provisions of state law prior to seeking relief in this Court.*
 - i. From the date of this Order, for patients who, at the time of this Order, are already past the maximum length of restoration set out herein, Defendants shall provide the 30-day notice to committing courts before discharging such patients pursuant to this Order;
 - j. No later than March 15, 2023, patients currently admitted at OSH who have exceeded the length of restoration set forth in this Order shall be discharged from their restoration commitment and from the hospital; and
 - k. Defendants shall consult with the Neutral Expert regarding operational and clinical aspects of implementing these limitations on the duration of inpatient restoration.
- (4) This Order shall terminate upon the Neutral Expert reporting to this Court that OSH/OHA has timely admitted A&A and GEI patients for at least three consecutive months, and that the termination of this Order would not cause the Defendants to fall back out of compliance. For purposes of this Order "timely admission" means within seven days of a State Court order delivered to OSH ordering that the patient be admitted.

- (5) If this Order is not terminated pursuant to Paragraph (4), this Order will expire on September 1, 2023, unless renewed by the Court prior to that time

DATED: _____

CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of May, 2023, I filed a true and correct copy of the foregoing document with the Clerk of the Court for the United States District Court – district of Oregon via the CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

/s/Jane E. Vetto

Jane E. Vetto OSB # 914564
Marion County Counsel
Attorney for Defendants Marion County